

1779.4. Application Contents.

An application shall contain all of the following:

- (a) A statement signed by the applicant under penalty of perjury certifying that to the best of the applicant's knowledge and belief, the items submitted in the application are correct. If the applicant is a corporation, the chief executive officer shall sign the statement. If there are multiple applicants, these requirements shall apply to each applicant.
- (b) The name and business address of the applicant.
- (c) An itemization of the total fee calculation, including sources of figures used, and a check in the amount of 80 percent of the total application fee.
- (d) The name, address, and a description of the real property of the continuing care retirement community.
- (e) An estimate of the number of continuing care residents at the continuing care retirement community.
- (f) A description of the proposed continuing care retirement community, including the services and care to be provided to residents or available for residents.
- (g) A statement indicating whether the application is for a certificate of authority to enter into continuing care or life care contracts.
- (h) A license to operate the proposed continuing care retirement community as a residential care facility for the elderly or documentation establishing that the applicant has received a preliminary approval for licensure from the department's Community Care Licensing Division.
- (i) A license to operate the proposed skilled nursing facility or evidence that an application has been filed with the Licensing and Certification Division of the State Department of Health Services, if applicable.
- (j) A statement disclosing any revocation or other disciplinary action taken, or in the process of being taken, against a license, permit, or certificate held or previously held by the applicant.
- (k) A description of any matter in which any interested party involved with the proposed continuing care retirement community has been convicted of a felony or pleaded nolo contendere to a felony charge, or been held liable or enjoined in a civil action by final judgment, if the felony or civil action involved fraud, embezzlement, fraudulent conversion, or the misappropriation of property. For the purpose of this subdivision, "interested party" includes any representative of the developer of the proposed continuing care retirement community or the applicant, including all general partners, executive officers, or chief operating officers and board members of corporations; and managing members and managers of limited liability companies for each entity; who has significant decision making authority with respect to the proposed continuing care retirement community.

(l) If the applicant is an entity other than an individual, the following information shall also be submitted:

(1) A statement identifying the type of legal entity and listing the interest and extent of the interest of each principal in the legal entity. For the purposes of this paragraph, "principal" means any person or entity having a financial interest in the legal entity of 10 percent or more. When the application is submitted in the name of a corporation, the parent, sole corporate shareholder, or sole corporate member who controls the operation of the continuing care retirement community shall be listed as an applicant. When multiple corporate applicants exist, they shall be listed jointly by corporate name on the application, and the certificate of authority shall be issued in the joint names of the corporations. When the application is submitted by a partnership, all general partners shall be named as coapplicants and the department shall name them as coproviders on any certificate of authority it issues.

(2) The names of the members of the provider's governing body.

(3) A statement indicating whether the applicant was or is affiliated with a religious, charitable, nonprofit or for-profit organization, and the extent of any affiliation. The statement shall also include the extent, if any, to which the affiliate organization will be responsible for the financial and contract obligations of the applicant and shall be signed by a responsible officer of the affiliate organization.

(4) A statement identifying any parent entity or other affiliate entity, the primary activities of each entity identified, the relationship of each entity to the applicant, and the interest in the applicant held by each entity.

(5) Copies of all contracts, management agreements, or other documents setting forth the relationships with each of the other entities.

(6) A statement indicating whether the applicant, a principal, a parent entity, affiliate entity, subsidiary entity, any responsible employee, manager, or board member, or anyone who profits from the continuing care retirement community has had applied against it any injunctive or restrictive order of a court of record, or any suspension or revocation of any state or federal license, permit, or certificate, arising out of or relating to business activity of health or nonmedical care, including, but not limited to, actions affecting a license to operate a health care institution, nursing home, intermediate care facility, hospital, home health agency, residential care facility for the elderly, community care facility, or child day care facility.

(m) A description of the business experience of the applicants in the operation or management of similar facilities.

(n) A copy of any advertising material regarding the proposed continuing care retirement community prepared for distribution or publication.

(o) Evidence of the bonds required by Section 1789.8.

(p) A copy of any proposed reservation agreement.

(q) A copy of the proposed deposit agreements.

(r) The name of the proposed escrow agent and depository.

(s) Any copies of reservation and deposit escrow account agreements.

(t) A copy of any proposed continuing care contracts.

(u) A statement of any monthly care fees to be paid by residents, the components and services considered in determining the fees, and the manner by which the provider may adjust these fees in the future. If the continuing care retirement community is already in operation, or if the provider operates one or more similar continuing care retirement communities within this state, the statement shall include tables showing the frequency and each percentage increase in monthly care rates at each continuing care retirement community for the previous five years, or any shorter period for which each continuing care retirement community may have been operated by the provider or his or her predecessor in interest.

(v) A statement of the actions that have been, or will be, taken by the applicant to fund reserves as required by Section 1792 or 1792.6 and to otherwise ensure that the applicant will have adequate finances to fully perform continuing care contract obligations. The statement shall describe actions such as establishing restricted accounts, sinking funds, trust accounts, or additional reserves. If the applicant is purchasing an existing continuing care retirement community from a selling provider, the applicant shall provide an actuarial report to determine the liabilities of existing continuing care contracts and demonstrate the applicant's ability to fund those obligations.

(w) A copy of audited financial statements for the three most recent fiscal years of the applicant or any shorter period of time the applicant has been in existence, prepared in accordance with generally accepted accounting principles and accompanied by an independent auditor's report from a reputable firm of certified public accountants. The audited financial statements shall be accompanied by a statement signed and dated by both the chief financial officer and chief executive officer for the applicant or, if applicable, by each general partner, or each managing member and manager, stating that the financial statements are complete, true, and correct in all material matters to the best of their knowledge.

(x) Unaudited interim financial statements shall be included if the applicant's fiscal year ended more than 90 days prior to the date of filing. The statements shall be either quarterly or monthly, and prepared on the same basis as the annual audited financial statements or any other basis acceptable to the department.

(y) A financial study and a marketing study that reasonably project the feasibility of the proposed continuing care retirement community and are prepared by a firm or firms acceptable to the department. These studies shall address and evaluate, at a minimum, all of the following items:

(1) The applicant and its prior experience, qualifications, and management, including a detailed description of the applicant's proposed continuing care retirement community, its service package, fee structure, and anticipated opening date.

(2) The construction plans, construction financing, and permanent financing for the proposed continuing care retirement community, including a description of the anticipated source, cost, terms, and use of all funds to be used in the land acquisition, construction, and operation of the continuing care retirement community. This proposal shall include, at a minimum, all of the following:

(A) A description of all debt to be incurred by the applicant for the continuing care retirement community, including the anticipated terms and costs of the financing. The applicant's outstanding indebtedness related to the continuing care retirement community may not, at any time, exceed the appraised value of the continuing care retirement community.

(B) A description of the source and amount of the equity to be contributed by the applicant.

(C) A description of the source and amount of all other funds, including entrance fees, that will be necessary to complete and operate the continuing care retirement community.

(D) A statement itemizing all estimated project costs, including the real property costs and the cost of acquiring or designing and constructing the continuing care retirement community, and all other similar costs that the provider expects to incur prior to the commencement of operation. This itemization shall identify all costs related to the continuing care retirement community or project, including financing expenses, legal expenses, occupancy development costs, marketing costs, and furniture and equipment.

(E) A description of the interest expense, insurance premiums, and property taxes that will be incurred prior to opening.

(F) An estimate of any proposed continuing care retirement community reserves required for items such as debt service, insurance premiums, and operations.

(G) An estimate of the amount of funds, if any, that will be necessary to fund startup losses, fund statutory and refundable contract reserves, and to otherwise provide additional financial resources in an amount sufficient to ensure full performance by the provider of its continuing care contract obligations.

(3) An analysis of the potential market for the applicant's continuing care retirement community, addressing such items as:

(A) A description of the service area, including its demographic, economic, and growth characteristics.

(B) A forecast of the market penetration the continuing care retirement community will achieve based on the proposed fee structure.

(C) Existing and planned competition in and about the primary service area.

(4) A detailed description of the sales and marketing plan, including all of the following:

(A) Marketing projections, anticipated sales, and cancellation rates.

(B) Month-by-month forecast of unit sales through sellout.

(C) A description of the marketing methods, staffing, and advertising media to be used by the applicant.

(D) An estimate of the total entrance fees to be received from residents prior to opening the continuing care retirement community.

(5) Projected move-in rates, deposit collections, and resident profiles, including couple mix by unit type, age distribution, care and nursing unit utilization, and unit turnover or resale rates.

(6) A description or analysis of development-period costs and revenues throughout the development of the proposed continuing care retirement community.

(z) Projected annual financial statements for the period commencing on the first day of the applicant's current fiscal year through at least the fifth year of operation.

(1) Projected annual financial statements shall be prepared on an accrual basis using the same accounting principles and procedures as the audited financial statements furnished pursuant to subdivision (x).

(2) Separate projected annual cash-flow statements shall be provided. These statements shall show projected annual cash-flows for the duration of any debt associated with the continuing care retirement community. If the continuing care retirement community property is leased, the cash-flow statement shall demonstrate the feasibility of closing the continuing care retirement community at the end of the lease period.

(A) The projected annual cash-flow statements shall be submitted using prevailing rates of interest, and assume no increase of revenues and expenses due to inflation.

(B) The projected annual cash-flow statements shall include all of the following:

(i) A detailed description and a full explanation of all assumptions used in preparing the projections, accompanied by supporting supplementary schedules and calculations, all to be consistent with the financial study and marketing study furnished pursuant to subdivision (y). The department may require such other supplementary schedules, calculations, or projections as it determines necessary for an adequate application.

(ii) Cash-flow from monthly operations showing projected revenues for monthly fees received from continuing care contracts, medical unit fees if applicable, other periodic fees, gifts and bequests used in operations, and any other projected source of revenue from operations less operating expenses.

(iii) Contractual cash-flow from activities showing projected revenues from presales, deposit receipts, entrance fees, and all other projected sources of revenue from activities, less contract acquisition, marketing, and advertising expenditures.

(iv) Cash-flows from financing activities, including, but not limited to, bond or loan proceeds less bond issue or loan costs and fees, debt service including CAL Mortgage Insurance premiums, trustee fees, principal and interest payments, leases, contracts, rental agreements, or other long-term financing.

(v) Cash-flows from investment activities, including, but not limited to, construction progress payments, architect and engineering services, furnishings, and equipment not included in the construction contract, project development, inspection and testing, marketable securities, investment earnings, and interfund transfers.

(vi) The increase or decrease in cash during the projection period.

(vii) The beginning cash balance, which means cash, marketable securities, reserves, and other funds on hand, available, and committed to the proposed continuing care retirement community.

(viii) The cash balance at the end of the period.

(ix) Details of the components of the ending cash balance shall be provided for each period presented, including, but not limited to, the ending cash balances for bond reserves, other reserve funds, deposit funds, and construction funds balance.

(3) If the cash-flow statements required by paragraph (2) indicate that the provider will have cash balances exceeding two months' projected operating expenses of the continuing care retirement community, a description of the manner in which the cash balances will be invested, and the persons who will be making the investment decisions, shall accompany the application.

(4) The department may require the applicant to furnish additional data regarding its operating budgets, projections of cash required for major repairs and improvements, or any other matter related to its projections including additional information, schedules, and calculations regarding occupancy rate projections, unit types, couple mix, sex and age estimates for resident mix, turnover rates, refund obligations, and sales.

(aa)(1) A declaration by the applicant acknowledging that it is required to execute and record a Notice of Statutory Limitation on Transfer relating to continuing care retirement community property.

(2) The notice required in this subdivision shall be acknowledged and suitable for recordation, describe the property, declare the applicant's intention to use all or part of the described property for the purposes of a continuing care retirement community pursuant to this chapter, and shall be in substantially the following form:

"NOTICE OF STATUTORY LIMITATION ON TRANSFER

Notice is hereby given that the property described below is licensed, or proposed to be licensed, for use as a continuing care retirement community and accordingly, the use and transfer of the property is subject to the conditions and limitations as to use and transfer set forth in Sections 1773 and 1789.4 of the Health and Safety Code. This notice is recorded pursuant to subdivision (aa) of Section 1779.4 of the Health and Safety Code.

The real property, which is legally owned by (insert the name of the legal owner) and is the subject of the statutory limitation to which this notice refers, is more particularly described as follows: (Insert the legal description and the assessor's parcel number of the real property to which this notice applies.)"

(3) The Notice of Statutory Limitation on Transfer shall remain in effect until notice of release is given by the department. The department shall execute and record a release of the notice upon proof of complete performance of all obligations to residents.

(4) Unless a Notice of Statutory Limitation on Transfer has been recorded with respect to the land on which the applicant or provider is operating, or intends to operate a continuing care retirement community, prior to the date of execution of any trust deed, mortgage, or any other lien or encumbrance securing or evidencing the payment of money and affecting land on which the applicant or provider intends to operate a continuing care retirement community, the applicant or provider shall give the department advance written notice of the proposed encumbrance. Upon the giving of notice to the department, the applicant or provider shall execute and record the Notice of Statutory Limitation on Transfer in the office of the county recorder in each county in which any portion of the continuing care retirement community is located prior to encumbering the continuing care retirement community property with the proposed encumbrance.

(5) In the event that the applicant or provider and the owner of record are not the same entity on the date on which execution and recordation of the notice is required, the leasehold or other interest in the continuing care retirement community property held by the applicant or provider shall survive in its entirety and without change, any transfer of the continuing care retirement community property by the owner. In addition, the applicant or provider shall record a memorandum of leasehold or other interest in the continuing care retirement community property that includes a provision stating that its interest in the property survives any transfer of the property by the owner. The applicant or provider shall provide a copy of the notice and the memorandum of interest to the owner of record by certified mail and to the department.

(6) The notice shall, and, if applicable, the memorandum of interest shall be indexed by the recorder in the grantor-grantee index to the name of the owner of record and the name of the applicant or provider.

(ab) A statement that the applicant will keep the department informed of any material changes to the proposed continuing care retirement community or its application.

(ac) Any other information that may be required by the department for the proper administration and enforcement of this chapter.